



RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2023-24

DELEGATED OFFICER DECISION

REVIEW OF THE STRATEGY OF DEALING WITH CONTAMINATED LAND IN RCT
15th JANUARY 2024

REPORT TO ACCOMPANY THE DECISION OF THE DIRECTOR, PUBLIC HEALTH,
PROTECTION & COMMUNITY SERVICES

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1. PURPOSE OF THE REPORT

- 1.1 In accordance with the Council's Scheme of Delegation, this report has been prepared to accompany the intended Officer decision of the Director of Public Health, Protection and Community Services and to provide information regarding the recent review of the Council's Contaminated Land Inspection Strategy.

2. RECOMMENDATIONS

It is recommended to:

- 2.1 Note the review of the Council's Contaminated Land Inspection Strategy.
- 2.2 Agree the Council's Contaminated Land Inspection Strategy as attached at Appendix 1.

3. BACKGROUND

- 3.1 Contaminated land can affect health, blight areas, and preclude redevelopment. The reclamation of derelict and often contaminated industrial sites can therefore be a crucial factor in the regeneration of communities. Rhondda Cynon Taf has had a

history of industrial exploitation, which has left a legacy of over 4600 such sites. Many of them are in prime locations and are ripe for redevelopment. The contaminated land regime compliments the Development Control process and provides a mechanism to release some of the most contaminated sites for beneficial use. Its risk-based approach will ensure that sites are cleaned up sufficiently to enable them to be safely used for their new purpose. It therefore supports regeneration, whilst at the same time aims to safeguard the health of our community.

3.2 There are regulatory controls in place now to cover potentially polluting processes which should limit new land contamination being created. The Contaminated Land regime was created with the intention of dealing with the legacy of previous land use that we have inherited from past growth and development. The Council's duties in respect of contaminated land are contained within Part 2A of the Environmental Protection Act 1990 which came into force in Wales in July 2001. Under Part 2A, the Council is required to take a strategic approach in order to identify contaminated land. The Contaminated Land Inspection Strategy (CLIS) outlines the rational, ordered, and efficient approach that the Council intends to deal with the legacy of contaminated land.

3.3 The Contaminated Land Regime introduced a risk-based approach to dealing with contaminated land. Firstly, the Council must satisfy itself that a "*contaminant linkage*" exists on the land. A "*contaminant linkage*" requires three elements, a "*source*"; a "*pathway*"; and a "*receptor*".

- A **source** is a substance that is in on or under the land and which has the potential to cause *harm* or to cause *pollution of controlled waters*.
- A **pathway** is one or more routes or means, by or through which, a *receptor* is being exposed to, or affected by a *contaminant*, or could be exposed or affected.
- A **receptor** is something that could be adversely affected by a contaminant, for example a person, an organism, an ecosystem, property, or controlled waters.

The Council can only have regard for receptors that are likely to be present given the current use of the land which might be affected. A significant contaminant linkage must give rise to a level of risk sufficient to justify a piece of land being determined as contaminated land. Part 2A is not intended to apply to land with levels of contaminants in soil that are commonplace or widespread throughout Wales or parts of it. If land is found to contain normal, or close to normal levels of contamination, it would not be considered further under the regime.

3.4 Following a public consultation Rhondda Cynon Taf County Borough Council published its initial CLIS in January 2004. It was written in accordance with technical advice issued by the National Assembly for Wales and addressed all the responses received as a result of the consultation process. The Council's CLIS was designed to achieve the following set of priorities with respect to potential contaminated land:

- a. To protect human health and well being
- b. To encourage the redevelopment of damaged land/ reuse of Brownfield land
- c. To encourage voluntary remediation

- d. To communicate and work effectively with other organisations to protect other receptors
- e. To engage with local communities to establish their priorities
- f. To ensure compliance with and enforcement of the legislation and statutory guidance

3.5 Historically a number of key strategic sites have been investigated and remediated by the Council in partnership with the Welsh Development Agency (WDA) and other stakeholders, e.g., Coed Ely Colliery and Coking Works, and the Phurnacite works in Abercwmboi (removal of two tar tips). The remediation of many other sites has been secured through the planning process. A geographical information system (GIS) developed by the Public Health and Protection Department has proved invaluable at the planning consultation stage in identifying such areas of land. Contaminated land issues are often complex and dealing with potential contaminated sites is difficult especially as information is often limited or unavailable.

3.6 In March 2005, following a number of site investigations jointly commissioned by the Council and Environment Agency Wales (now Natural Resources Wales), Brofiscin Quarry in Groesfaen was designated as a Special Site due to the pollution of a major ground water source. As a Special Site the regulation of the site passed to Environment Agency Wales and following extensive investigations and consultations, site remediation works were completed in June 2013. This is the only area of land in Rhondda Cynon Taf which has formally been determined as contaminated land in line with legislative and statutory guidance requirements.

3.7 Since 2010, the Welsh Assembly Government has not provided a capital funding programme for the investigation and/or remediation of contaminated land. In addition to this, the Council has no specific capital budget for the investigation and/or remediation of contaminated land. As a result, the Council has focused its resources on ensuring effective site investigation and remediation via the Development Control process, by conditioning planning consents where necessary. Investigations are carried out prior to development and seek to characterise the exact nature of any potential pollutant linkages and ensure they are appropriately remediated.

4. THE CONTAMINATED LAND INSPECTION STRATEGY

4.1 The CLIS review process has been used to assess the effectiveness of the original CLIS in meeting the requirements of Part 2A legislation and statutory guidance. The first full review of the CLIS was completed in December 2008. In 2016, the strategy was then revised to take account of the change in statutory guidance in 2012. Timescales in the original Contaminated Land Strategy were deemed to be arbitrary, which needed to be redefined in light of experience, demands on resources and changes in funding provision. As a result, each review of the CLIS has redefined inspection targets in order to provide a realistic and achievable programme. A copy of the recently reviewed CLIS(Dec 2023) is included for Member's information in Appendix 1.

4.2 The effective implementation of the Contaminated Land Regime in Wales is central to economic regeneration and environmental improvement. Each Local Authority

must play its part in this national programme. To that end as set out in the CLIS, Rhondda Cynon Taf County Borough Council aims to:

- meet the statutory requirement to produce a CLIS for its area.
- demonstrate how it meets the requirement for a strategic approach to its inspection duties as outlined in the Welsh Statutory Guidance.
- inform all stakeholders of its intentions in the execution of its statutory duties under Part 2A, and
- provide information to the NRW for its report *on contaminated land*.
- Continue with a risk-based approach.

4.3 The withdrawal of capital grant funding significantly impacted Welsh Local Authorities in their ability to undertake the formal investigation of potential contaminated land. As a result, the Council focused its resources on providing input into the Development Control process, whereby conditions are added to planning consents requiring investigations/remediation to be undertaken where necessary. This involves a significant amount of Officer time but it does provide an effective alternative mechanism for dealing with contamination by ensuring that the land is suitable for use and securing remediation on a voluntary basis.

4.4 There are no current funding opportunities available and the Council will continue to utilise its resources via the Development Control process. The Officers will provide comments on submissions received through the planning process or requests for pre-planning advice and contribute to the preparation of the Local Development Plan. This position will be kept under review and will depend on availability of future funds from Welsh Government or other appropriate schemes.

4.5 In 2023, the Welsh Local Government Association and Natural Resources Wales (NRW) updated and published the Welsh Land Contamination Working Group's guidance document '[Development of Land Affected by Contamination: A guide for Developers](https://www.rctcbc.gov.uk), (rctcbc.gov.uk). This was first published in 2006 and is a reference document for developers and their advisors/agents who might be involved in assessing or managing land contamination in Wales. It aims to outline the information required by Local Planning Authorities (LPA) in order for them to determine planning applications and then the subsequent discharge of associated land contamination conditions. This guidance document provides an overview of good practice for land contamination management procedures which, if followed, will help meet the information requirements of the LPA during development of that land.

4.6 There are numerous examples to demonstrate the use of contaminated land conditions to ensure the safe redevelopment of land with a potential source of contamination in RCT. Appendix 2 contains some examples of the use of such conditions in achieving effective remediation via the development control process.

5. WELSH LANGUAGE IMPLICATIONS

5.1 All correspondence associated with the production of the revised Contaminated Land Inspection Strategy will be compliant with the Welsh Language (Wales) Measure 2011 where the Welsh language is treated no less favourably than English.

6. FINANCIAL IMPLICATION(S)

- 6.1 As detailed above there is currently no specific funding from Welsh Government or Council budget for dealing with the legacy of contaminated land. The Council will continue to utilise the Planning process to ensure the safe redevelopment of sites with a previous land use. This position will be kept under review, depending on the future availability of funding.

7. LEGAL IMPLICATIONS OR LEGISLATION CONSIDERED

- 7.1 The Council's duties in respect of contaminated land are contained within Part 2A of the Environmental Protection Act 1990 which came into force in Wales in July 2001 through the Contaminated Land (Wales) Regulations 2001. The legislation was supported by comprehensive statutory guidance issued by the National Assembly for Wales in November 2001. The guidance required Local Authorities to prepare a strategy detailing how they will take a rational, ordered and efficient approach to the inspection process.

- 7.2 In 2012, following a consultation exercise undertaken by DEFRA and the Welsh Assembly Government, the existing Contaminated Land statutory guidance was revised and reissued. The resulting Welsh Government Guidance Document: Contaminated Land Statutory Guidance -2012 sought to produce a clearer, simpler regime consistent with the principles of good regulation. It focussed on the definition of 'contaminated land' and commenced section 86 of the Water Act 2003 – amending the definition of 'contaminated land' as it relates to significant pollution of controlled water. The Contaminated Land (Wales) Regulations 2012 amended the 2007 Regulations.

8. LINKS TO THE CORPORATE AND NATIONAL PRIORITIES AND THE WELL-BEING OF FUTURE GENERATIONS ACT.

- 8.1 The redevelopment of contaminated land plays an important part in regenerating communities; whereby once derelict parcels of land can be brought back for beneficial use. This has a clear association with the enabling *Prosperity* priority of the 2020-24 Corporate Plan, which involves creating the opportunity for people and businesses to be innovative, entrepreneurial and fulfil their potential. The safe redevelopment of land for housing, commercial and leisure activities would also fit with the two other priorities of ensuring *People* are healthy and creating *Places* where people are proud to live, work and play.

- 8.2 The aim of the CLIS is made in full consideration of the sustainable development principles and bringing back previously contaminated sites in to use to benefit communities. The objectives of the revised CLIS will also support the Council to contribute to three of the seven goals in the Well-being of Future Generations (Wales) Act 2015, namely:

1. A healthier Wales.
2. A prosperous Wales.
3. A Wales of cohesive communities.

9. CONCLUSION

- 9.1 The progress with inspections via the CLIS has been significantly slower than anticipated due to lack of funding since 2010, whereby resources have been focused on the redevelopment of potentially contaminated land through the planning process. Whilst involvement via the planning process continues to place a significant demand on Officer time, it provides an effective option for dealing with contamination, ensuring that the land is suitable for use and securing remediation on a voluntary basis.
- 9.2 The CLIS has been revised to take account of relevant guidance and outlines the Councils approach of dealing with the legacy of contaminated land in RCT. The Council will continue to utilise the development control process to achieve effective investigation and remediation of contaminated land but will seek to utilise any future funds released by Welsh Government or other appropriate schemes if they become available.

LOCAL GOVERNMENT ACT 1972

AS AMENDED BY

THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985

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